

FCC MAIL SECTION

Federal Communications Commission

FCC 96-370

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Implementation of the)	
Telecommunications Act of 1996:)	CC Docket No. 96-193
)	
Reform of Filing Requirements)	
and Carrier Classifications)	
)	
Anchorage Telephone Utility, Petition for)	AAD 95-91
Withdrawal of Cost Allocation Manual)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: September 4, 1996**Released: September 12, 1996****Comment Date: October 15, 1996****Reply Comment Date: November 5, 1996**

By the Commission:

I. INTRODUCTION

1. In the Telecommunications Act of 1996,¹ Congress sought "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."² To further this goal, Congress required the Commission to "permit any common carrier . . . to file cost allocation manuals and ARMIS [Automated Reporting Management Information System] reports annually, to the extent such carrier is required to file such manuals or

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

² See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

reports," and to revise its carrier classification and reporting requirement rules by adjusting, for inflation, references to carrier revenues.³

2. As required by the 1996 Act, we modify our rules to require only annual ARMIS reports and annual cost allocation manual revisions, eliminating the more frequent filings we previously required. Because the 1996 Act did not specify how we should measure inflation in adjusting references to carrier revenues, we adopt interim rules to adjust those references for inflation using a generally available inflation index. In addition, we initiate a rulemaking to consider additional modifications to our rules, including whether we should modify or eliminate the 60-day advance notice requirement for certain cost allocation manual revisions as well as which inflation measure we should incorporate into our rules pertaining to carrier classification and reporting requirements.

II. ORDER

A. Statutory Requirements

1. Automated Reporting Management Information System Reports

3. Section 402(b)(2)(B) of the Telecommunications Act of 1996 provides that "[t]he Commission shall permit any common carrier . . . to file . . . ARMIS reports annually, to the extent such carrier is required to file such . . . reports."⁴ ARMIS is an automated system developed in 1987 for collecting common carrier financial and operating information.⁵ Additional reports were added to the ARMIS system in 1991, for the collection of service quality and network infrastructure information from price cap carriers, in 1992 for the collection of statistical data formerly included in Form M, and in 1995 for monitoring video dialtone investment, expense and revenue data.⁶ The video dialtone reports were eliminated

³ 1996 Act, sec. 402(b)(2)(B), (c).

⁴ 1996 Act, sec. 402(b)(2)(B).

⁵ See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), Report and Order, 2 FCC Rcd 5770 (1987) (ARMIS Order), modified on recon., Order on Reconsideration, 3 FCC Rcd 6375 (1988).

⁶ Policy and Rules Concerning Rates for Dominant Carriers, Memorandum Opinion and Order, 6 FCC Rcd 2974 (Com. Car. Bur. 1991) (Bureau Order); Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, Memorandum Opinion and Order, 7 FCC Rcd 1083 (Com. Car. Bur. 1992) (Bureau Revision Order); Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, Memorandum Opinion and Order, 10 FCC Rcd 11292

by the 1996 Act.⁷ Today ARMIS consists of ten reports.⁸ Two of these ARMIS reports, the quarterly report (43-01), which contains aggregate cost and revenue data for the previous calendar quarter, and the semi-annual service quality report (43-06), which contains service quality data for the previous two calendar quarters, are filed more frequently than annually. Except for the infrastructure report (43-07), which is filed by June 30, the annual ARMIS reports covering the preceding calendar year are filed on or before April 1.⁹

4. Our rules require common carriers to file their quarterly cost and revenue reports by March 31, June 30, September 30, and December 31, and their semi-annual service quality reports by March 31 and September 30, of each year.¹⁰ Section 402(b)(2)(B) of the 1996 Act supersedes current requirements that ARMIS reports be filed more frequently than annually. As a result, we amend our rules to specify that carriers must file the ARMIS quarterly report, 43-01, and the ARMIS semi-annual service quality report, 43-06, once each year.¹¹ We require carriers to file the reports, containing data from the previous calendar year, on or before April 1, with the first report due April 1, 1997. We direct the Common Carrier Bureau ("Bureau") to make any changes to the form and content of these reports necessary to accommodate the change from quarterly and semi-annual filings to annual filings.

(Com. Car. Bur. 1995).

⁷ 1996 Act, sec. 302(b)(3).

⁸ The ten ARMIS reports are: the quarterly report (43-01); the USOA report (43-02); the joint cost report (43-03); the access report (43-04); the forecast report (495-A); the actual usage report (495-B); two service quality reports (43-05 and 43-06); the infrastructure report (43-07); and the operating data report (43-08). In a separate Notice of Proposed Rulemaking, we proposed to reduce the frequency of the quarterly service quality report (43-05) to require a semi-annual filing. Revision of Filing Requirements, Notice of Proposed Rulemaking, FCC 96-64, CC Docket No. 96-23, para. 15 (Feb. 27, 1996) (Filing Revision Notice), summarized in 61 Fed. Reg. 10522. On March 20, 1996, the Common Carrier Bureau released an Order rescinding that proposal and requiring an annual filing for the ARMIS 43-05 report, consistent with the requirements of Section 402(b)(2)(B) of the 1996 Act. Revision of Filing Requirements: Annual ARMIS Reports, Order, DA 96-381, CC Docket No. 96-23 (Com. Car. Bur. Mar. 20, 1996) (Filing Revision Order), summarized in 61 Fed. Reg. 18143.

⁹ 47 C.F.R. §§ 43.21(e), (f) (setting filing dates of April 1 for the USOA report (43-02), the joint cost report (43-03), the access report (43-04), the forecast report (495-A), the actual usage report (495-B)); Bureau Revision Order, supra note 6, paras. 9-11, app. E at 1221 (setting filing date of April 1 for the operating data report (43-08)); Filing Revision Order, supra note 8 (setting filing date of April 1 for the 43-05 service quality report); Bureau Order, supra note 6, Attachment C at 3069 (setting filing date of June 30 for the infrastructure report (43-07)).

¹⁰ 47 C.F.R. § 43.22(a); Bureau Order, supra note 6, Attachment C at 3058.

¹¹ Appendix A provides the text of the amended rules. The amended rules incorporate minor changes to correct typographical errors.

2. Cost Allocation Manual Filings

5. Section 402(b)(2)(B) of the Telecommunications Act of 1996 provides that "[t]he Commission shall permit any common carrier . . . to file cost allocation manuals . . . annually, to the extent such carrier is required to file such manuals."¹² Under Section 64.903(a) and (b) of our rules, incumbent local exchange carriers ("LECs") with "annual operating revenues of \$100 million or more" must file cost allocation manuals with the Commission and "update [them] . . . at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes."¹³

6. Our rules require carriers to file quarterly updates to their cost allocation manuals.¹⁴ Section 402(b)(2)(B) of the 1996 Act supersedes this requirement that cost allocation manuals be filed more frequently than annually. As a result, we amend Section 64.903(b) of our rules to require carriers to update their cost allocation manual annually, rather than quarterly. Carriers are now required to file their annual updates on the last working day of each year.¹⁵ The amended rule, set forth in Appendix A, incorporates minor changes to correct typographical errors.

3. Inflation Adjustments

a. Background

7. Section 402(c) of the 1996 Act mandates that we "adjust the revenue requirements" of Sections 32.11, 64.903, and Part 43 of our rules "to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter."¹⁶ The release date of that Report and Order was October 19, 1992.¹⁷

¹² 1996 Act, sec. 402(b)(2)(B).

¹³ 47 C.F.R. § 64.903(a), (b).

¹⁴ 47 C.F.R. § 64.903(b).

¹⁵ In Part III.A, *infra*, we address the 60-day notice requirement for changes to the cost apportionment table and to the description of time reporting procedures.

¹⁶ 1996 Act, sec. 402(c). "CLASSIFICATION OF CARRIERS.--In classifying carriers according to section 32.11 of its regulations (47 C.F.R. 32.11) and in establishing reporting requirements pursuant to part 43 of its regulations (47 C.F.R. Part 43) and Section 64.903 of its regulations (47 C.F.R. 64.903), the Commission shall adjust the revenue requirements to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter. This subsection shall take effect on the date of enactment of this Act." *Id.*

The 1996 Act provides that the effective date of Section 402(c) is February 8, 1996.¹⁸

8. Section 32.11(a) of our rules establishes a \$100 million threshold in "annual revenues from regulated telecommunications operations" for the purpose of classifying carriers for accounting purposes.¹⁹ Carriers for which revenues from regulated telecommunications operations reach or exceed this threshold in each of the five immediately preceding years are subject to more detailed accounting requirements.²⁰ Section 64.903(a) of our rules, however, requires incumbent LECs with "annual operating revenues of \$100 million or more" to file cost allocation manuals describing how the carriers allocate costs between regulated and nonregulated activities.²¹ Section 64.904(a) of our rules imposes annual audit obligations on incumbent LECs that are required to file a cost allocation manual.²²

9. Our Part 43 rules require additional reports, including: annual and quarterly filings including reports of revenues, expenses, taxes, investment, and other financial data;²³ reports concerning local or state regulation of inside wiring services;²⁴ and reports of proposed changes in operating plant depreciation rates.²⁵ These rules generally impose reporting

¹⁷ Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992).

¹⁸ See 1996 Act, sec. 402(c).

¹⁹ 47 C.F.R. § 32.11.

²⁰ See id. For example, carriers with annual revenues from regulated telecommunications operations below the threshold may use a single account, Account 1120 (Cash and equivalents), to record assets that larger carriers must record in four separate accounts, Account 1130 (Cash), Account 1140 (Special cash deposits), Account 1150 (Working cash advances), and Account 1160 (Temporary investments). 47 C.F.R. §§ 32.1120-.1160.

²¹ 47 C.F.R. § 64.903(a). "To ensure compliance with our rules, a carrier should submit its CAM [cost allocation manual] to this Commission for approval within 90 days after it reaches the \$100 million operating revenue threshold." GTE Service Corporation Petition for Waiver of § 64.904 of the Commission's Rules, Order, 8 FCC Rcd 4436, para. 11 (Com. Car. Bur. 1993) (GTE Order).

²² 47 C.F.R. § 64.904(a). "[T]he initial audit is required beginning the year after the carrier first crosses the \$100 million threshold." GTE Order, supra note 21, para. 7.

²³ 47 C.F.R. §§ 43.21-22. Six of the ten ARMIS reports are currently described in Part 43 of our rules. 47 C.F.R. §§ 43.21(e), (f), 43.22(a). See discussion supra Part II.A.1.

²⁴ 47 C.F.R. § 43.41. In a separate Notice of Proposed Rulemaking, we proposed to abolish this reporting requirement. Filing Revision Notice, supra note 8, paras. 13-14.

²⁵ 47 C.F.R. § 43.43.

requirements on carriers with annual operating revenues of at least \$100 million, while carriers with annual operating revenues below this amount need not file the reports.²⁶ We note, however, that Section 43.21(c) imposes reporting requirements on companies controlling carriers with annual operating revenues of \$100 million or more and that Section 43.21(d) currently requires record carriers with annual operating revenues over \$75 million to file selected financial information annually with the Common Carrier Bureau.²⁷

b. Discussion

10. Section 402(c) of the 1996 Act requires that we adjust the revenue thresholds discussed above for inflation, but does not specify an inflation measure. The statute requires, however, that the inflation adjustments take effect on February 8, 1996, the date of enactment of the 1996 Act. To comply with this requirement, we conclude that we should adopt, without notice and opportunity for comment, interim rules that rely on a generally available inflation measure to adjust the revenue thresholds. Carriers subject to price cap regulation use the Gross Domestic Product Price Index ("GDP-PI") to adjust price cap indices for inflation in their annual filings.²⁸ The GDP-PI is a broadly based inflation measure developed by the United States Department of Commerce that reflects price changes occurring in all sectors of the economy. The Department of Commerce recently replaced that fixed-weighted price index with the Gross Domestic Product Chain-type Price Index ("GDP-CPI").²⁹ For our

²⁶ See 47 C.F.R. §§ 43.21, 43.22, 43.41, 43.43. Consistent with our interpretation of the initial independent audit required under Section 64.904 of our rules, we require carriers to begin collecting data for their initial ARMIS report filings in the calendar year after the carrier first crosses the threshold. See supra note 22 and accompanying text. Sections 43.21(e)(1), (e)(2), (f)(1), (f)(2), (f)(3), and (g) refer to the filing of ARMIS reports 495A, 495B, 43-02, 43-03, 43-04, and 43-01, respectively.

²⁷ 47 C.F.R. § 43.21(c), (d). In a separate Notice of Proposed Rulemaking, we proposed to abolish the reporting requirement imposed by Section 43.21(d). Filing Revision Notice, supra note 8, para. 12.

²⁸ See Price Cap Performance Review for Local Exchange Carriers, First Report and Order, 10 FCC Rcd 8961, para. 351 (1995); see also Support Material to be Filed with 1996 Annual Access Tariffs, Tariff Review Plans, DA 96-263, para. 6 (Com. Car. Bur. Feb. 29, 1996).

²⁹ J. Steven Landefeld & Robert P. Parker, Preview of the Comprehensive Revision of the National Income and Product Accounts: BEA's New Featured Measures of Output and Prices, Survey of Current Business, July 1995, at 31. The GDP-CPI differs from the GDP-PI in that the GDP-PI is a fixed-weighted index while the GDP-CPI is a chain-type index. Id. Fixed-weighted indices are calculated with a set of fixed weights, derived from the "base" or "weighting" year. Id. The same set of fixed weights is applied in calculations of the index values for the entire time period. Id. The BEA's chain-type indices are calculated using weights that are derived from adjacent years. Id. Consequently the weights used in calculations of the index values for different years are not the same. Id. This change from fixed-weighted to chain-type indices "recognizes the need in estimating real GDP and prices to use weights that are appropriate for the specific periods being measured." Id. The use of fixed weights in the calculation of fixed-weight indices causes an error known as "substitution bias, which

interim rules, we choose to rely on the GDP-CPI rather than the GDP-PI, because the Bureau of Economic Analysis of the Department of Commerce, which produces both indices, considers the GDP-CPI a more accurate measure of price changes.³⁰

11. In conformance with Section 402(c), we adopt interim rules to adjust the revenue thresholds in our rules for inflation. For the purpose of adjusting the revenue thresholds for inflation, the term "revenue year" means the calendar year in which the revenues were recorded in the revenue accounts. We adjust the revenue thresholds for inflation based on the annual average value of the Department of Commerce GDP-CPI for the revenue year relative to the value of the GDP-CPI on October 19, 1992.³¹ Thus, the inflation adjusted revenue thresholds for 1995, for example, apply to revenues recorded in the revenue accounts for the year ended December 31, 1995. These rules will remain in effect until we adopt permanent rules in the rulemaking we initiate in Part III, below. We will proceed expeditiously to adopt final rules and anticipate completion of this rulemaking before December 31, 1996.

12. Our interim rules require that revenue thresholds applicable to annual operating revenues from 1993 through 1995 be adjusted for inflation by multiplying the fixed revenue thresholds in our rules, usually \$100 million, by the ratio of the annual value of the GDP-CPI in the revenue year to the October 19, 1992 value of the GDP-CPI, and rounding the result to the nearest \$1 million.³² Appendix B presents the October 19, 1992 GDP-CPI value as interpolated from the seasonally adjusted third and fourth quarter 1992 values, the annual GDP-CPI values for 1993 through 1995, and the inflation adjusted revenue thresholds for the years 1993 through 1995 calculated according to our interim rules. Thus, the interim revenue thresholds applicable to annual operating revenues from 1993, 1994, and 1995 are \$102 million, \$104 million, and \$107 million, respectively.

reflects the fact that the commodities for which output grows rapidly tend to be those for which prices increase less than average or decline." *Id.* at 34. Growth is overstated for periods after the base year and understated for periods before the base year. *Id.* at 31. The magnitude of the effect in price indices is smaller than that observed in output indices in recent years, because during this period changes in output for goods with falling relative prices have been much greater than price changes. *Id.* at 34 n.3.

³⁰ Improved Estimates of the National Income and Product Accounts for 1959-95: Results of the Comprehensive Revision, Survey of Current Business, Jan./Feb. 1996, at 1-2, 19-20. In Part III.B, *infra*, we discuss GDP-PI and GDP-CPI in greater detail.

³¹ Appendix A provides the text of the amended rules. The amended rules incorporate minor changes to correct typographical errors.

³² Because the annual average value of the GDP-CPI for 1992 is below its value on October 19, 1992, our interim rule does not set an inflation adjusted threshold for 1992 operating revenues.

4. Effective Date

13. Because all of the rule changes discussed above are deregulatory in nature and relieve restrictions, we are making them effective upon publication in the Federal Register.³³ To the extent that these rule changes merely implement the requirements of the 1996 Act and involve no discretionary action by the Commission, we find good cause to conclude that the notice and comment procedures are unnecessary.³⁴

14. The changes to the revenue thresholds in Sections 32.11, 64.903, and Part 43 of our rules are necessary to comply with the statutory directive in Section 402(c) that we adjust those thresholds to reflect inflation since October 19, 1992. Although the statute specifies no inflation measure, Section 402(c) states that "[t]his subsection shall take effect on [February 8, 1996,] the date of enactment of this Act."³⁵ Interim rules are thus necessary to comply with that statutory directive. Therefore, we find good cause for adopting these interim rules without providing prior notice and an opportunity for comment because such procedures would be impracticable and contrary to the public interest.³⁶

B. Other Matters

1. Specific Filing Requirements

15. Our interim rules do not set inflation adjusted thresholds for 1996 operating revenues, because the value of the inflation index for 1996 will not be available until early April 1997.³⁷ We, therefore, stay our Part 43 reporting requirements to the extent that they

³³ See 5 U.S.C. § 553(d)(1), (3).

³⁴ See 5 U.S.C. § 553(b)(B) (providing that notice and comment is not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

³⁵ 1996 Act, sec. 402(c).

³⁶ See 5 U.S.C. § 553(b)(B).

³⁷ As discussed in Part II.A.3.b, our interim rules will remain in effect only until we adopt permanent rules in the rulemaking we initiate in Part III, below. Because we anticipate completion of that rulemaking before December 31, 1996, here we address only the lack of inflation adjusted thresholds for 1996 operating revenues under our interim rules. We invite comment on similar issues associated with our proposed rules for adjusting the threshold revenues values in Part 43 and Sections 32.11 and 64.903 of our rules in Part III.B, below.

are currently imposed upon carriers that will first cross the revenue threshold in 1996.³⁸ In addition, we stay our rule that requires each carrier to file a cost allocation manual within 90 days of first reaching the operating revenue threshold to the extent that the rule would first apply to a carrier because of its 1996 operating revenues.³⁹ As a consequence of this stay, the annual audit requirement imposed on incumbent LECs pursuant to Section 64.904(a) of our rules is stayed for carriers that will first cross the revenue threshold in 1996.⁴⁰

2. Petition for Withdrawal of Cost Allocation Manual

a. Background

16. As of December 31, 1994, the annual operating revenues of Anchorage Telephone Utility ("ATU") exceeded \$100 million.⁴¹ ATU made an initial cost allocation manual filing on June 14, 1995; ATU's revised cost allocation manual, filed October 13, 1995, is pending.⁴² On March 29, 1996, following enactment of the 1996 Act, ATU petitioned for withdrawal of its cost allocation manual.⁴³ ATU contends that because its operating revenues for 1995 were \$107,823,490, it is not required to file a cost allocation manual.⁴⁴ ATU estimates that after adjusting for inflation, as required by the 1996 Act, the \$100 million annual operating revenue threshold for cost allocation manual filings under Section 64.903 of our rules would be "slightly more than \$109 million."⁴⁵

³⁸ We note that the Bureau has stayed the filing of ARMIS reports for those companies that have not yet begun filing such reports. Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995) (Stay Order).

³⁹ See supra note 21 and accompanying text.

⁴⁰ See supra note 22 and accompanying text.

⁴¹ Anchorage Telephone Utility, Initial Cost Allocation Manual (filed June 14, 1995). ATU's operating revenues for 1994 were \$107,309,169. Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to Debra A. Weber, Systems Accountant, FCC (May 2, 1996) (May 2 Letter).

⁴² Anchorage Telephone Utility Files Its Proposed Cost Allocation Manual, Public Notice, 10 FCC Rcd 7162 (1995); Anchorage Telephone Utility Refiles Its Proposed Cost Allocation Manual, Public Notice, DA 95-2229 (Nov. 1, 1995).

⁴³ Letter from Paul J. Berman, Covington & Burling, to William F. Caton, Acting Secretary, FCC (Mar. 29, 1996) (March 29 Letter).

⁴⁴ Id. at 1, 3; May 2 Letter, supra note 41.

⁴⁵ March 29 Letter, supra note 43, at 1, 3

17. ATU also suggests that, for the purpose of evaluating whether its annual operating revenues exceed the threshold, revenues that it "self-bills" to the Municipality of Anchorage should be excluded from its annual operating revenues.⁴⁶ ATU states that it "has always included the Municipality as an affiliate in its Cost Allocation Manual filed with the Alaska Public Utilities Commission."⁴⁷ Revenues billed by ATU to the Municipality of Anchorage are included in the annual operating revenues stated above, and were approximately \$1.5 million in 1994 and \$1.5 million in 1995.⁴⁸

b. Discussion

18. We deny ATU's motion to withdraw its cost allocation manual. Section 64.903(a) of our rules requires each incumbent LEC with annual operating revenues equal to or in excess of the threshold value to file a cost allocation manual.⁴⁹ The interim rules we adopt today increase the \$100 million annual operating revenue threshold for 1995 to \$107 million and for 1994 to \$104 million.⁵⁰ Therefore, based on ATU's representation that its operating revenues for 1994 and 1995 were \$107,309,169 and \$107,823,490, respectively, we find that ATU must file a cost allocation manual. We reject ATU's suggestion that its revenues billed to the Municipality of Anchorage be excluded from its annual operating revenues. ATU states that it "has always included the Municipality as an affiliate in its Cost Allocation Manual filed with the Alaska Public Utilities Commission."⁵¹ Under our rules, compensation for telecommunications services provided to an affiliate is to be recorded in the appropriate revenue accounts.⁵² The sum of the amounts recorded in those revenue accounts for the year is the annual operating revenue.⁵³

19. ATU's operating revenues for 1994 and 1995 exceed the operating revenue thresholds of \$104 million for 1994 and \$107 million for 1995 that we adopt today. Therefore, absent the stay imposed June 30, 1995 by the Bureau holding in abeyance the dates

⁴⁶ May 2 Letter, supra note 41.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ 47 C.F.R. § 64.903(a).

⁵⁰ See discussion supra Part II.A.3.b.

⁵¹ Id.

⁵² See 47 C.F.R. § 32.27(d).

⁵³ See 47 C.F.R. § 32.4999.

for filing ARMIS reports for those companies not already filing such reports, our rules would require ATU to file seven of the ten ARMIS reports, containing data from its operations in 1995 and 1996.⁵⁴ Section 64.904(a) of our rules requires ATU to obtain an independent auditor report on its cost allocation processes for 1995 and 1996.⁵⁵ Because such reports include "a positive [opinion] on whether the applicable data shown in the carrier's annual [ARMIS joint cost report (43-03)] present[] fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual," we stay these audit requirements as applied to ATU until filing of the ARMIS joint cost report is required.⁵⁶

III. NOTICE OF PROPOSED RULEMAKING

A. Cost Allocation Manual Filings

1. Background

20. Section 402(b)(2)(B) of the 1996 Act provides that "[t]he Commission shall permit any common carrier . . . to file cost allocation manuals . . . annually, to the extent such carrier is required to file such manuals."⁵⁷ Section 64.903(b) of our rules requires carriers that are subject to this rule's reporting requirements to file certain changes to their cost allocation manuals "at least 60 days before the carrier plans to implement the changes."⁵⁸

⁵⁴ Stay Order, supra note 38; see 47 C.F.R. § 43.21(e) (requiring filing of the forecast report (495-A) and the actual usage report (495-B) by each carrier required to file a cost allocation manual); 47 C.F.R. § 43.21(f) (requiring filing of the USOA report (43-02), the joint cost report (43-03), and the access report (43-04) by local exchange carriers with annual operating revenues equal to or above the inflation adjusted, indexed revenue threshold); 47 C.F.R. § 43.21(g) (requiring filing of the 43-01 report, formerly the quarterly report, by local exchange carriers with annual operating revenues equal to or above the inflation adjusted, indexed revenue threshold); Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, Memorandum Opinion and Order, 7 FCC Rcd 1083, paras. 9-11, app. E at 1221 (requiring filing of the operating data report (43-08) by local exchange carriers with annual operating revenues of \$100 million or more).

⁵⁵ 47 C.F.R. § 64.904(a).

⁵⁶ Id.

⁵⁷ 1996 Act, sec. 402(b)(2)(B).

⁵⁸ 47 C.F.R. § 64.903(b).

This requirement applies to "changes to the cost apportionment table and to the description of time reporting procedures."⁵⁹

2. Discussion

21. The purpose of the Commission's 60-day notice requirement is to help us ensure that each carrier's cost allocation manual reflects the carrier's new ventures and changes in the carrier's accounting for its existing ventures. This purpose remains valid.⁶⁰ We, therefore, propose to retain the existing 60-day notice requirement.⁶¹ Under this proposal, carriers would be required to file proposed changes to their cost apportionment tables or proposed changes to their descriptions of time reporting procedures at least 60 days before such changes are implemented. Alternatively, we could eliminate opportunities for carriers to modify their cost allocation manuals between annual filings. This approach would require carriers to seek a waiver of our rules before implementing changes to their cost allocation manuals as filed. We invite comment on these proposed alternatives. In particular, we ask interested parties to discuss whether the proposed alternatives are consistent with Section 402(b)(2)(B) of the 1996 Act.

B. Inflation Adjustments

22. As stated previously in Part II.A.3.a, the 1996 Act instructs us to "adjust the revenue requirements" listed in Sections 32.11, 64.903, and Part 43 of our rules "to account for inflation as of [October 19, 1992,] the release date of the Commission's Report and Order

⁵⁹ Id.

⁶⁰ The 1996 Act prohibits BOCs, or, in some cases, all incumbent local exchange carriers from using their telephone exchange service and exchange access operations to subsidize their competitive ventures. See, e.g., 47 U.S.C. §§ 254(k), 260(a)(1), 272(b)(5), 272(c)(2), 274(b)(4), 275(b)(2), and 276(a)(1). As we explained in the Accounting Safeguards Notice, we believe that Congress's primary intent in prohibiting this subsidization was to protect subscribers to regulated services from increased rates. See generally Accounting Safeguards Under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, FCC 96-309, CC Docket No. 96-150 (rel. July 18, 1996) (Accounting Safeguards Notice). We developed our cost allocation rules to help ensure that interstate ratepayers do not bear the costs and risks of nonregulated activities. See, e.g. Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298, para. 1, modified on recon., 2 FCC Rcd 6283 (1987), modified on further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990). Because a carrier's cost allocation manual describes how it separates the costs of regulated from nonregulated activities, it must be updated to reflect modifications to its nonregulated service offerings.

⁶¹ Appendix C provides the text of our proposed rules. The proposed rules incorporate minor changes to correct typographical errors.

in CC Docket No. 91-141, and annually thereafter."⁶² The 1996 Act also provides that the effective date of Section 402(c) is February 8, 1996.⁶³ We propose to adjust the threshold revenue values in Part 43 and Sections 32.11 and 64.903 of our rules for the effects of inflation from October 19, 1992 through the revenue year, which we have defined as the calendar year in which the revenues were recorded in the revenue accounts. For example, the inflation adjusted revenue thresholds for 1995 would be applied to revenues recorded in the revenue accounts for the year ended December 31, 1995. In conformance with the directive in the 1996 Act to "adjust [the thresholds] . . . for inflation . . . annually thereafter," we propose to update our threshold values annually as the relevant economic statistics become available. We request comment on these proposals.

23. The 1996 Act is silent with respect to the method we should use to adjust the thresholds for inflation. Carriers subject to price cap regulation adjust price cap indices for inflation in their annual filings. In developing our price cap program for incumbent LECs, we initially prescribed the use of the Gross National Product Price Index ("GNP-PI"), calculated by the Department of Commerce, to adjust the price cap indices annually for inflation.⁶⁴ We considered other price indices, including the Consumer Price Index and the Producer Price Index, but explained that we had rejected them in the past as "reflect[ing] fewer sectors of economic activity than . . . the GNP-PI, and [were] thus . . . more volatile and . . . less likely to reflect the costs faced by carriers."⁶⁵ We selected the GNP-PI over the GNP deflator, noting that because current-weight indices fluctuate according to the composition of the GNP "such an index cannot be used to compare the present cost of an item with its cost in a previous period."⁶⁶ We also rejected the use of "an industry-specific cost index," explaining that we had found that such an index could be vulnerable to manipulation and would be difficult to develop and implement.⁶⁷ In 1995, we replaced the GNP-PI with the Department of Commerce's Gross Domestic Product Price Index ("GDP-PI") after

⁶² 1996 Act, sec. 402(c).

⁶³ Id.

⁶⁴ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, paras. 50-54 (1990).

⁶⁵ Id. para. 51.

⁶⁶ Id.

⁶⁷ Id. para. 54.

concluding that the change would "eliminate a needless administrative burden without causing any harm to the public."⁶⁸

24. Since we selected the GDP-PI as the inflation measure for price cap indices, the Department of Commerce has completed another comprehensive revision of the National Income and Product Accounts, using chain-type annual-weighted indices to measure real output and prices.⁶⁹ The Bureau of Economic Analysis of the Department of Commerce found the GDP-CPI to be an improvement over the fixed-weighted GDP-PI, because chain-type weighted indices eliminate distortions in the measurement of prices for periods beyond the base year that are found in fixed-weighted indices.⁷⁰ We agree with this expert assessment. We, therefore, propose to adjust the thresholds for inflation by using the GDP-CPI.⁷¹ We invite comment on this proposal. We also request commenters to discuss alternative methods to measure inflation. We request comment on whether we should select an inflation index that is derived from a broad sample of economic sectors or seek an inflation index that is designed to track relevant industry sectors. In particular, we invite comment on whether to use an inflation estimate based on available, industry-specific consumer price indices, such as the Bureau of Labor Statistics consumer price index tracking local telephone prices in urban areas.⁷²

25. As stated above, we propose to adjust the revenue threshold value annually to capture the effects of inflation from October 19, 1992 through the revenue year. We invite comment on how we should calculate the GDP-CPI value for the specific date, October 19, 1992, and in particular, on the method we have adopted for doing this in our interim rules.⁷³ We propose to select the annual GDP-CPI as the inflation measure applicable to the revenue year. We propose to adjust our fixed, \$100 million and \$75 million thresholds for inflation by multiplying the fixed value by the ratio of the value of the annual GDP-CPI for the

⁶⁸ Price Cap Performance Review for Local Exchange Carriers, First Report and Order, 10 FCC Rcd 8961, para. 351 (1995).

⁶⁹ Improved Estimates of the National Income and Product Accounts for 1959-95: Results of the Comprehensive Revision, Survey of Current Business, Jan./Feb. 1996, at 1.

⁷⁰ Id. at 1-2, 19-20.

⁷¹ Our interim rules rely on this inflation measure. See discussion supra Part II.A.3.b.

⁷² Bureau of Labor Statistics, Consumer Price Index: Telephone, local charges (CUUR0000SE2701) (published monthly by the Bureau of Labor Statistics).

⁷³ See discussion supra paras. 11-12.

revenue year to the value of the GDP-CPI on October 19, 1992.⁷⁴ We invite comment on these proposals.

26. An inflation adjustment for revenue thresholds that depends on fourth quarter GDP-CPI values for the revenue year will not be available until the Department of Commerce releases those GDP-CPI values in April of the following year. Consequently, we propose to amend our cost allocation manual filing requirements so that a carrier with operating revenues for the first time greater than or equal to the inflation adjusted threshold for a given year would file its initial cost allocation manual 90 days after our publication of the adjusted threshold for that year in the Federal Register. We propose to require such companies to implement their initial annual cost allocation manual audit requirement in the next calendar year.⁷⁵ With respect to the initial implementation of the annual audit requirement, the audit work would be conducted in the calendar year following our publication of the adjusted threshold in the Federal Register and the audit report would be filed on or before April 1 of the following calendar year.⁷⁶ We propose to amend our rules to require any carrier, for which operating revenues first exceeded an adjusted threshold for a given year, to begin filing pursuant to Part 43 of our rules in the calendar year following our publication of that adjusted threshold in the Federal Register. We note that with respect to the initial filing of ARMIS reports by any carrier, for which operating revenues first exceeded an adjusted threshold for a given year, this requirement means that the carrier is to begin data collection in the calendar year following our publication of that adjusted threshold in the Federal Register.⁷⁷ We invite comment on these proposals.

27. As stated previously, our rules require one of the annual ARMIS reports covering the preceding calendar year to be filed by June 30 and the others to be filed by April 1.⁷⁸ We see no reason for having two different filing dates. We, therefore, propose to amend our rules to provide for a uniform filing deadline of April 1 for all ARMIS reports. In order

⁷⁴ See discussion supra Part II.A.3.

⁷⁵ See supra note 22 and accompanying text.

⁷⁶ For example, if a company's 1997 operating revenues exceeded the inflation-adjusted revenue threshold for 1997 published in the Federal Register in April, 1998, the company must file its cost allocation manual in July, 1998, have audit work conducted during 1999, and file its audit report on or before April 1, 2000.

⁷⁷ For example, if a company's 1997 operating revenues exceeded the inflation-adjusted revenue threshold for 1997 published in the Federal Register in April, 1998, the company must begin collecting ARMIS data in 1999, and file its initial ARMIS reports on or before April 1, 2000. Under the proposed rules set forth in Appendix C, this provision applies to the interstate carrier report for the reasons discussed previously in Part III.B.1.

⁷⁸ See supra paras. 3-4.

to assist carriers with compliance, we propose to add to Section 43.21 of our rules a brief description of four annual ARMIS reports, which are not described in Part 43: two service quality reports (43-05 and 43-06); the infrastructure report (43-07); and the operating data report (43-08).

28. We provide the text of our proposed rules in Appendix C. The proposed rules incorporate minor changes to correct typographical errors. We invite commenters to file specific alternative rule proposals.

C. ARMIS Report Filings

1. Background

29. On June 22, 1995, ATU filed a "Petition for a Declaratory Ruling, or in the Alternative, for Waiver or Rule Making," requesting a determination that incumbent LECs with more than \$100 million in annual operating revenues, but less than \$100 million in annual revenues from regulated telecommunications operations, were not subject to our ARMIS filing requirements.⁷⁹ In support of its petition, ATU cites discrepancies between statements in Commission orders to the effect that only Tier 1 LECs were required to file such reports and Sections 43.22 and 43.21(f) of our rules requiring filing by LECs with annual operating revenues of \$100 million or more.⁸⁰ ATU notes that similar inconsistencies were present in Commission staff submissions concerning ARMIS to the Office of Management and Budget under the Paperwork Reduction Act.⁸¹ On June 22, 1995, ATU also filed a "Petition for an Extension of Time" requesting an extension for the filing of its initial ARMIS 43-01 report "until at least 90 days after the Commission resolves [its] Petition for

⁷⁹ Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995) (June Petition Letter) (regarding Petition for Declaratory Ruling or, in the Alternative, for Waiver or Rule Making).

⁸⁰ See, e.g., *id.* at 5-8 (discussing Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, paras. 381-383 (1990), modified on recon., Order on Reconsideration, 6 FCC Rcd 2637 (1991), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993); Elimination of FCC Form 901, Monthly Form Required from Telephone Companies, Report and Order, 3 FCC Rcd 6261, para. 1 & n.2 (1988); ARMIS Order, supra note 5, paras. 24-25; Waiver of FCC Form 901, Monthly Form Required from Telephone Companies, Memorandum Opinion and Order, 3 FCC Rcd 567 (Com. Car. Bur. 1988)). Tier 1 LECs are "those companies having more than \$100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B telephone companies for the year 1983." Armis Order, supra note 5, at 5844 n.4.

⁸¹ June Petition Letter, supra note 79, at 8-10.

Declaratory Ruling, or in the [A]lternative for Waiver or Rule Making, filed [June 22, 1995].⁸² On June 30, 1995, in response to ATU's filings and to requests from other incumbent LECs for clarification concerning the timing or applicability of our ARMIS report filing rules, the Bureau stayed the dates for the filing of future ARMIS reports for those companies that had not yet begun filing such reports.⁸³

2. Discussion

30. The Commission has used two separate and distinct financial criteria to determine: (i) whether carriers are required to file ARMIS reports and cost allocation manuals; and (ii) the appropriate accounting classification of a particular carrier. By their terms, our rules rely on "annual operating revenues" to determine whether carriers must file ARMIS reports and cost allocation manuals, and on "annual revenues from regulated telecommunications operations" to classify carriers for accounting purposes.⁸⁴ "Annual operating revenues" include revenues from both regulated and nonregulated activities. "Regulated telecommunications operations" consist of all activities other than those classified as nonregulated activities for Title II accounting purposes.⁸⁵ Companies with annual revenues from regulated telecommunications operations equal to or in excess of the defined threshold are, for accounting purposes, "Class A" companies; those with such revenues less than that threshold are "Class B" companies.⁸⁶ Class B companies are permitted to maintain less detailed financial records under our Part 32 rules.⁸⁷ Under our rules, carriers may be subject to ARMIS reporting requirements even if they are not classified as "Class A" companies for

⁸² Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995) (regarding Extension of Time for FCC ARMIS Form 43-01).

⁸³ Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995).

⁸⁴ See 47 C.F.R. §§ 32.11, 43.21, 43.22. Section 32.11(a) classifies carriers as "Class A" or "Class B" for accounting purposes. 47 C.F.R. § 32.11(a).

⁸⁵ By nonregulated activities, we mean activities not regulated under Title II of the Communications Act. Nonregulated activities generally include activities that have never been subject to regulation under Title II; activities subject to Title II regulation that we have preemptively deregulated; and activities subject to Title II regulation that have been deregulated at the interstate level, but not preemptively deregulated, that we decide should be classified as nonregulated activities for Title II accounting purposes. See 47 C.F.R. § 32.23(a) (defining nonregulated activities). Nonregulated operating revenues, when not included in other revenue accounts, are recorded in Account 5280. 47 C.F.R. § 32.5280.

⁸⁶ 47 C.F.R. § 32.11(a). Classification as "Class A" or "Class B" is determined based on a company's revenues over the preceding five years. 47 C.F.R. § 32.11(e).

⁸⁷ See, e.g., 47 C.F.R. § 32.1120 (describing the single account to be used by Class B companies to record assets that Class A companies must record in four separate accounts).

accounting purposes.⁸⁸ Although some carriers have objected that our discussions of these revenue thresholds have, at times, lacked clarity and consistency, we find the language of our rules in this area clear and dispositive. Any contrary or inconsistent language in the orders adopting or describing these rules does not override this clear language.

31. Our current reporting requirements for five of the ten ARMIS reports are triggered by a carrier's passing an "annual operating revenue" threshold: the quarterly report (43-01), the USOA report (43-02), the joint cost report (43-03); the access report (43-04); and the operating data report (43-08). The duty to file two additional ARMIS reports, the forecast report (495-A) and the actual usage report (495-B), is also triggered by a carrier's passing an annual operating revenue threshold, although indirectly.⁸⁹ Although our rules in this area are clear, we take this opportunity to reevaluate whether these reporting requirements should apply to those incumbent LECs for which total annual operating revenues, including nonregulated revenues, exceed a defined, inflation-adjusted threshold or whether these reporting requirements should apply only to those incumbent LECs for which annual revenues from regulated telecommunications operations exceed a defined, inflation-adjusted threshold. Alternatively, we consider whether these ARMIS reports should be required only of "Tier 1 LECs." We, therefore, grant ATU's petition for rulemaking to consider these issues. We dismiss ATU's petition to the extent it makes alternative requests for declaratory ruling or waiver.

32. We believe that continuing to require ARMIS reports from those incumbent LECs for which annual operating revenues, both regulated and nonregulated, exceed a defined, inflation-adjusted threshold is necessary to provide us with the financial and operating data we need to administer our accounting, cost allocation, jurisdictional separations, and access charge rules, and to preserve our ability to monitor industry developments and quantify the effects of alternative regulatory proposals.⁹⁰ Our ability to detect improper subsidization of nonregulated services in violation of our cost allocation rules, as also

⁸⁸ If a company's annual operating revenues exceed the defined threshold, that company must file ARMIS reports. This is true, for example, even if the company is a Class B company for accounting purposes because its annual revenues from regulated telecommunications operations have always been below the applicable threshold.

⁸⁹ These two reports are filed by "[e]ach communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations." 47 C.F.R. § 43.21(e). Cost allocation manual filing requirements are based on "annual operating revenue[]" thresholds. 47 C.F.R. § 64.903(a).

⁹⁰ ARMIS reports have been a useful source of cost information to the FCC in its evaluation of tariffs filed under rate-of-return regulation. Cost information from these reports has also played an important role in tariff investigations, certain rulemakings concerning cost issues, and in the evaluation of exogenous cost adjustments under the price cap rules (for example, in determining the cost effects of property transfers).

mandated by the 1996 Act, would be impaired by a reporting requirement threshold based solely on regulated revenues.⁹¹ Under our Part 32 rules, companies with both regulated and nonregulated operations include revenues from both kinds of operations in their revenue accounts. The purpose of our cost allocation rules is to ensure that costs associated with nonregulated operations are not shifted to ratepayers purchasing regulated services. Because improper subsidization, resulting from an improper allocation of nonregulated costs, could present a serious problem where the nonregulated operations are large relative to the regulated operations, we tentatively conclude that our reporting requirements should continue to be based on total operating revenues.⁹² Under this approach, we require reports from companies with substantial operations, regulated and nonregulated, allowing us to monitor compliance by these larger companies with our cost allocation rules.

33. Tier 1 LECs have been defined as "those companies having more than \$100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B telephone companies for the year 1983."⁹³ Limiting ARMIS reporting requirements to these "Tier 1 LECs" would impair our ability to collect financial and operating data that reflects the present structure of the telecommunications industry, including the widespread growth of nonregulated activities since 1983. We note that this classification originated in 1985 in the tariff review process; in the 1990 Tariff Review Plan, however, the definition of "Tier 1" was modified to equate "Tier 1" companies with "Class A" companies and "Tier 2" companies with "Class B" companies as defined in Sections 32.11(a) and 32.11(e) of our rules.⁹⁴ We note that this later definition, which is not based on 1983 financial data, classifies companies based upon revenues from regulated operations; we discussed the problem presented by such an approach in the preceding paragraph. We, therefore, tentatively conclude that we should continue to require ARMIS report filings by those companies with annual operating revenues equal to or above a defined, inflation-adjusted threshold. We invite comment on these tentative conclusions. Our proposed rules, which continue the approach of our current ARMIS rules, are set forth in

⁹¹ For a discussion of the accounting safeguards required by the 1996 Act, see Accounting Safeguards Notice, supra note 60.

⁹² For example, a company with no nonregulated operations does not have the opportunity to misallocate costs in this fashion.

⁹³ Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364, para. 3 (Com. Car. Bur. 1990); Commission Requirements for Cost Support Material to Be Filed with 1989 Annual Access Tariffs, Order, 4 FCC Rcd 1662, para. 10 (Com. Car. Bur. 1988); ARMIS Order, supra note 5, at 5844 n.4.

⁹⁴ Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364, para. 4 (Com. Car. Bur. 1990).

proposed rules, which continue the approach of our current ARMIS rules, are set forth in Appendix C.⁹⁵ We invite comment on these proposed rules, and invite commenters to file specific alternative rule proposals.

34. We continue the current stay of the filing requirements of all ARMIS reports for those companies that have not yet begun filing such reports until ninety (90) days following the Federal Register publication of a summary of the Report and Order in this proceeding. In view of the stay, we dismiss ATU's petition for an extension of time as moot.

D. Other Filings

1. Section 43.22 Quarterly Filings

a. Background

35. Section 402(b)(2)(B) of the 1996 Act provides that "[t]he Commission shall permit any common carrier . . . to file . . . ARMIS reports annually, to the extent such carrier is required to file such . . . reports."⁹⁶ Section 43.22 of our rules, "Quarterly reports of communication common carriers," requires filing of two reports.⁹⁷ Only one of these is an ARMIS report. For that report, we have amended the rule today to require annual, rather than quarterly filing.⁹⁸ The rule also requires a second quarterly report to be filed by "designated interstate carrier[s]" with annual operating revenues above a defined threshold.⁹⁹

b. Discussion

36. When we imposed the quarterly reporting requirement upon "designated interstate carrier[s]," we stated that the filing would, like the ARMIS quarterly report (43-01), "display[] . . . allocations between [the designated carrier's] regulated and nonregulated activities."¹⁰⁰ We noted that "adaptation" of the ARMIS quarterly filing for the designated

⁹⁵ The proposed rules incorporate minor changes to correct typographical errors.

⁹⁶ 1996 Act, sec. 402(b)(2)(B).

⁹⁷ 47 C.F.R. § 43.22.

⁹⁸ See 47 C.F.R. § 43.22(a); supra Part II.A.1.

⁹⁹ 47 C.F.R. § 43.22(b).

¹⁰⁰ Elimination of FCC Form 901, Monthly Form Required from Telephone Companies, Report and Order, 3 FCC Rcd 6261, para. 13 (1988).

carrier was "straightforward."¹⁰¹ We also delegated authority to the Chief of the Common Carrier Bureau to revise the format of this quarterly report "consistent with the methodology and requirements" adopted in the ARMIS reports.¹⁰²

37. Section 402(b)(2)(B) of the 1996 Act does not direct us to change the filing requirements for the interstate carrier quarterly report. We propose, however, to continue our practice of having consistent filing requirements for this report and the corresponding ARMIS report. Consequently, we propose to amend our rules to require that the interstate carrier report be filed annually, on or before April 1, and direct the Common Carrier Bureau to make any changes to the form content of this report necessary to accommodate the change from quarterly to annual filing.¹⁰³ We invite comment on this proposal.

2. Section 43.21 Annual Filings

38. Section 43.21 of our rules requires communications common carriers that maintain separate "departments or divisions" for carrier operations and noncarrier activities to file separate annual supplemental reports that show how the consolidated report required pursuant to subsection 43.21(a) has been developed.¹⁰⁴ In the past only AT&T, on behalf of its General and Long Lines divisions, submitted such supplemental reports. Neither AT&T nor the Bell Operating Companies currently operate pursuant to the "departments or divisions" model contemplated in Section 43.21(b). We tentatively conclude, therefore, that Section 43.21(b) should be deleted from our rules. We solicit comment on this tentative conclusion.

39. The remaining annual reporting requirements of Section 43.21 of our rules require some reports to be filed by April 1 and others by March 31.¹⁰⁵ We propose to change to April 1 the current March 31 filing date for annual reports filed pursuant to Sections

¹⁰¹ Id.

¹⁰² Id. para. 14.

¹⁰³ Appendix C provides the text of our proposed rules. The proposed rules incorporate minor changes to correct typographical errors.

¹⁰⁴ 47 C.F.R. § 43.21(b).

¹⁰⁵ See 47 C.F.R. §§ 43.21(a), (d) (setting filing dates of March 31); 47 C.F.R. §§ 43.21(e), (f) (setting filing dates of April 1).

43.21(a) and 43.21(d) of our rules.¹⁰⁶ This proposal does not affect the filing date for annual report Forms 10-K (or any superseding form) pursuant to Section 43.21(c); those will continue to be filed annually, not later than the date prescribed by the Securities and Exchange Commission.¹⁰⁷ We invite comment on this proposal.

IV. PROCEDURAL ISSUES

A. *Ex Parte* Presentations

40. The proceeding initiated in Part III, above, is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.¹⁰⁸

B. Initial Regulatory Flexibility Analysis

41. Section 603 of the Regulatory Flexibility Act (RFA), as amended,¹⁰⁹ requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities."¹¹⁰ Our Order, which reforms filing requirements and carrier classifications, implements Section 402(b)(2)(B) and, on an interim basis, Section 402(c) of the 1996 Act, without a notice and comment rulemaking proceeding, and therefore no regulatory flexibility analysis is required.

42. The Notice of Proposed Rulemaking (NPRM) portion of this proceeding concerns the method for making inflation adjustments to the annual revenue threshold that determines which carriers must file ARMIS reports and cost allocation manuals. In addition, the NPRM seeks comment on whether the Commission should retain the 60-day notice requirement for revisions to cost allocation manuals when a LEC enters into a new business venture or makes changes to an existing business venture. Finally, the NPRM proposes several changes to the

¹⁰⁶ Appendix C provides the text of our proposed rules. The proposed rules incorporate minor changes to correct typographical errors.

¹⁰⁷ 47 C.F.R. § 43.21(c).

¹⁰⁸ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

¹⁰⁹ See 47 U.S.C. § 603.

¹¹⁰ *Id.* at § 605(b).

filing requirements for ARMIS reports, and the reports required to be filed by interstate exchange carriers (IXCs) under Section 43.22(b) and AT&T under Section 43.21(b) of our rules. We do not believe the rules proposed in the NPRM portion of this proceeding will have a significant economic impact on a significant number of small entities because the businesses affected by our proposed rules are not small entities within the meaning of the RFA and also because our proposals will not have a significant economic impact on these businesses.

43. The RFA defines the term "small entity" as having the same meaning as "small business concern" under the Small Business Act (SBA),¹¹¹ which defines small business concern as "one which is independently owned and operated and which is not dominant in its field of operation"¹¹² Section 121.201 of the Small Business Administration regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level.¹¹³

44. Our proposed rules concerning the filing requirements for cost allocation manuals and for adjusting for inflation references to carrier revenues apply to the Bell Operating Companies and other incumbent LECs, which, because they are dominant in their field of operations, are by definition not small entities under the RFA. These proposed rules would also affect filing requirements for new LECs entering the local exchange market under the competitive provisions of the 1996 Act to the extent that such carriers' revenues exceed the annual indexed revenue threshold of \$100 million in operating revenue as adjusted upward by the rules adopted and proposed herein. While these companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA.

45. Similarly, our proposal to change the IXC report required by Section 43.22(b) of the Commission's rules affects only designated IXCs with annual operating revenues above \$100 million dollars. In addition, we propose to eliminate the report required by Section 43.21(b) of our rules that presently is filed only by AT&T. While IXCs may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA.

46. Moreover, none of the proposed requirements contained in our NPRM will have a significant economic impact on the LECs or IXCs who are required to file these reports or manuals. The number of filings required would be reduced by our proposed rules, and raising

¹¹¹ *Id.* at § 601(6), adopting 15 U.S.C. § 632(a)(1).

¹¹² 15 U.S.C. § 632(a)(1).

¹¹³ 13 C.F.R. § 121.201.

revenue thresholds may allow certain carriers to avoid filing the reports or manuals. This should have a beneficial impact on carriers affected by the proposed rules.

47. We therefore certify, pursuant to Section 605(b) of the RFA, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Secretary shall send a copy of this Notice, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.¹¹⁴ A copy of this certification will also be published in the Federal Register.

C. Comment Filing Procedures

48. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before October 15, 1996, and reply comments on or November 5, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Ernestine Creech of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS) at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. ITS's telephone number is 202-857-3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

49. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that all comments and reply comments, regardless of their length, include a short and concise summary of the substantive arguments raised in the pleading. Comments, exclusive of appendices and summaries of substantive arguments, shall be no longer than twenty-five (25) pages and reply comments no longer than fifteen (15) pages.

50. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Ernestine Creech of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows software. The diskette

¹¹⁴ 5 U.S.C. § 605(b).

should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

D. Paperwork Reduction Act

51. This Notice contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

52. Written comments by the public on the proposed or modified information collection are due on or before 30 days following publication in the Federal Register and reply comments on or before 21 days following publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

E. Further Information

53. For further information concerning this proceeding, contact Valerie Yates, Accounting and Audits Division, Common Carrier Bureau at 202-418-0850.

V. ORDERING CLAUSES

54. Accordingly, IT IS ORDERED that, pursuant to Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 402(b)(2)(B) and 402(c), and Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C.